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IN THE

Supreme Court of the United States

October Term 1975

No. 75-702

CONGRESS OF HISPANIC EDUCATORS, et al.,

Petitioners,

vs.

SCHOOL DISTRICT NO. 1, DENVER, COLORADO, et al.

MEMORANDUM OF KEYES ET AL. IN SUPPORT OF CERTIORARI

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Wilfred Keyes, et al., plaintiffs below, respectfully submit this memorandum in support of the petition for certiorari filed herein by the Congress of Hispanic Educators, et al., for the reasons set forth below.

1. Plaintiffs Keyes, et al., supported the proposed bilingual bi-cultural education plan submitted by the intervenors in the courts below. The plan was designed to complement, but not be a substitute for, desegregation of the pupils, teachers and schools of the system. The Cardenas Plan was compatible with and supportive of plaintiffs' pupil and faculty desegregation proposals. We submit that the District Court's order with respect to the Cardenas Plan was fully justified by the record in this case and was within the District Court's remedial powers.

2. The District Court, in setting forth guidelines for planning the desegregation of the system, said that a viable

plan must be "fair in relationship to the objectives to be achieved and the manner of achieving them." (Jt. App. 167a) The trial judge, who has devoted a great deal of time and attention to this case in numerous proceedings since 1969, understood the need for special attention to the problems of desegregation planning in Denver, a community with two minority groups, Blacks and Chicanos. Judge Doyle was mindful of the need to devise a desegregation plan which dealt fairly with the pupils of both minority groups as well as the Anglo majority. He knew that it was necessary to avoid a plan which would remedy segregation of blacks by either further disadvantaging Chicanos or ignoring their legitimate concerns about equality of educational opportunity. Judge Doyle's decision to include bilingual and multicultural educational programs as a part of the desegregation plan was related by the Judge to his guideline of "Providing Equal Educational Opportunity for All." (210a) Judge Doyle's order with respect to the Cardenas Plan is justified by the court's power and duty to insure that its remedial orders are in accord with "the sense of basic fairness inherent in equity." *Swann* v. *Board of Education,* 402 U.S. 1, 31 (1971).

3. We submit that the Court of Appeals was not correct in disapproving the district court's order on the basis that it was unwarranted intrusion by the district court into matters of educational policy and judgment. The District Court avoided the error of unnecessarily intruding into the defendants' sphere of educational judgments. The District Court knew that the local authorities in Denver had failed and refused to live up to their duty to remedy the segregated system despite repeated opportunities. The default of the school board to propose an adequate desegregation measure was a major part of the problem faced by the district judge:

> Accordingly, the Board has for the past four years and even in the recent past, notwithstanding the mandate of the Supreme Court of the United States, consistently resisted and opposed every desegregation effort and has sought to avoid the effects of such orders. The court finds, therefore, that the Board of Education has not in the past shown a willingness to formulate a desegregation plan; that it now refuses to do so; and that according to every probability it will continue to avoid and refuse to desegregate the school system. The court finds that further efforts to compel them to do so would be unavailing. (167a)

This pattern of recalcitrance by the defendants made it necessary for the Court to look to its own consultant and to the plaintiffs and intervenors for expertise in formulating a remedial plan. The Cardenas Plan, and the accompanying addendum prepared by local Denver members of the Congress of Hispanic Educators was the only adequate plan made available to the District Court to deal with the special problems of Chicano pupils involved in the system-wide desegregation effort mandated by the Fourteenth Amendment.

But notwithstanding the Board's lack of cooperation the District Court's actual order with respect to the Cardenas Plan was moderate, flexible, and respectful of the local Board's prerogatives with respect to matters of educational policy and administration. The Court did not order blanket implementation of the Cardenas proposal. Rather it limited its order to a requirement that the defendants develop an appropriate bi-lingual and bi-cultural educational program "in accordance with the model presented by Dr. Jose Cardenas or a plan substantially and materially similar thereto and incorporating to the extent feasible the proposals set forth in the Addendum to the Cardenas Plan." (106a) Thus

the Board had an opportunity to adapt the program to its own views as to the feasibility and desirability of particular suggestions. The defendants were ordered to engage their own qualified consultants to assist in developing the program under the direction of the school authorities. (107a) Finally the District Court limited its order to an initial requirement that the program be implemented at a pilot basis at four elementary schools, one junior high and one high schools. (One of the elementary schools involved, DelPueblo, already had begun a bi-lingual education program prior to the court order). Thus the court's order involved no infringement of the board's prerogatives beyond what was necessary to insure a satisfactory remedy of the constitutional violation.

Respectfully submitted,

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